

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re) Case No. _____
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)
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)
)
 Debtor(s))

Notice. If you oppose the proposed course of action or relief sought in this motion, you must file a written objection with the bankruptcy court no later than _____ days after the date listed in the certificate of service below. If you do not file an objection, the court may grant the motion without further notice or hearing. Your objection must set forth the specific grounds for objection and your relation to the case. The objection must be received by the clerk of court at:

by the deadline specified above or it may not be considered. You must also serve the objection on:

within that same time. If the court sets a hearing, you will receive a separate notice listing the hearing date, time, and other relevant information.

Certificate of Service

Note: Service must be made pursuant to Federal Rule of Bankruptcy Procedure 7004 (e.g., 7004(b)(3) for corporations and 7004(h) for insured depository institutions).

I certify on _____ this notice, the motion, and [LBF 717.15](#) if this notice was served on paper, were served on the trustee, U.S. Trustee, and all other parties named in the motion, whose names and addresses are listed below:

Signature

OSB # (if attorney)

Debtor(s) address (if not provided above) and last 4 digits of Taxpayer ID #

Michael D. O'Brien, OSB 951056
Michael D. O'Brien & Associates PC
12909 SW 68th Parkway, Suite 160
Portland, OR 97223
(503) 786-3800

Of Attorneys for Sutjiyati Widjaja, Debtor.

IN THE BANKRUPTCY COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON

In re:)	Case No. 17-33838-pcm13
)	
Sutjiyati Widjaja)	MOTION TO DETERMINE MORTGAGE
)	PAYMENT and OBJECTION TO PAY CHANGE
)	NOTICE FILED BY US BANK TRUST NA and
)	NOTICE RE INTENT TO SEEK ATTORNEY
)	ATTORNEY FEES
Debtors.)	

Motion to Determine Mortgage Payment and Objection to Pay Change Notice

By and through her attorney Michael D. O'Brien, the Debtor MOVES the Court for an Order finding that the Notice of Mortgage Payment Change filed on November 8, 2021 by US Bank Trust, N.A. as Trustee of the Cabana Series III Trust, aka or care of SN Servicing Corporation (hereafter "US Bank") attached to Claim Number 3 is inaccurate. Debtor further seeks an Order from this Court establishing the correct mortgage payment due and to determine the status of the escrow account. The Court has authority to grant this relief pursuant to LBR 3002.1(b)(2) which provides that a mortgage payment change notice shall take effect, "unless the court orders otherwise." This Motion is timely as the advisory committee notes on the adoption of this rule establish that this rule "does not set a deadline for filing a motion for a determination of the validity of the payment change, but it provides as a general matter – subject to a contrary court order – that if no motion has been filed on or before the day before the change is to take effect, the announced change goes into effect." Committee Notes on Rules – 2018 Amendment.

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In its Notice of Mortgage Payment Change (“NMPC”) dated November 8, 2021, US Bank alleges the monthly payment due from Ms. Widjaja will increase on December 1, 2021 to \$2,844.86. This is an increase of \$189.29 per month based entirely on a change in the escrow portion of the payment. Ms. Widjaja denies that US Bank has properly calculated the escrow account.

Factual Basis

In the initial proof of claim filed in this case, US Bank¹ alleged that Ms. Widjaja was as of the day she file for bankruptcy relief, in default on her loan and the account had a “projected escrow shortage” of \$6,817.77. {See Claim #3, Form 410A} The projected escrow shortage estimates escrow account activity in the year following the bankruptcy case filing and should not be confused with the “escrow deficiency for fees advanced” which accounts for an escrow shortage due prior to the bankruptcy case filing. The “projected escrow shortage” was included in the pre-petition arrearages to be cured by the Trustee pursuant to the Chapter 13 Plan. Commencing with her first post-bankruptcy mortgage payment due on November 1, 2017, the post-petition mortgage payment due to US Bank was \$2,553.41 which included \$524.44 for the escrow portion. {See Claim #3, Form 410A} The loan is a fixed rate loan so any changes in the payment amount are attributable only to the escrow account. {See Note dated November 18, 2008 and Loan Modification Agreement dated July 15, 2015 attached to Claim #3}

On July 9, 2019, US Bank filed² a Notice of Mortgage Payment Change alleging that the regular monthly payment due from Ms. Widjaja would increase to \$2,620.14 commencing August 1, 2019. {See Notice of Mortgage Pay Change docketed 7/9/2019 with Claim #3} The sole reason provided for the change in payment was an increase in the escrow payment of \$66.73 per month or \$800.76 over the course of the year. This increase was attributed to an approximate

¹ Original Claim #3 was filed by Ditech Financial LLC fka Green Tree Servicing LLC. That claim was transferred by Ditech to Chalet Properties III, LLC as indicated in a Transfer of Claim filed on 11/16/2018 and docketed in this PAGE 2 OF 5 – MOTION TO DETERMINE MORTGAGE PAYMENT AND OBJECTION TO PAY CHANGE NOTICE

\$100.00 annual increase in homeowners' insurance and an approximate \$700.00 annual increase in property taxes. Inexplicably, the annual escrow account disclosure statement attached to this Pay Change Notice indicates that Ms. Widjaja's escrow account had a surplus of \$3,680.42. Ms. Widjaja chose not to challenge the July 9, 2019 Notice of Mortgage Payment Change.

On July 6, 2020, US Bank filed³ a Notice of Mortgage Payment Change alleging that the regular monthly payment due from Ms. Widjaja would increase to \$2,655.57 commencing August 1, 2020. {See Notice of Mortgage Pay Change docketed 7/6/2020 with Claim #3} The sole reason provided for the change in payment was an increase in the escrow payment of \$35.43 per month or \$425.16 over the course of the year. This increase was attributed to an approximate \$125.00 annual increase in homeowners' insurance and an approximate \$300.00 annual increase in property taxes. The annual escrow account disclosure statement attached to this Pay Change Notice indicates that Ms. Widjaja's escrow account still had a surplus which had now grown to \$3,704.61. Ms. Widjaja chose not to challenge the July 6, 2020 Notice of Mortgage Payment Change.

Finally, on November 8, 2021, US Bank filed the Notice of Mortgage Payment Change which prompted this challenge. {See Notice of Mortgage Pay Change docketed 11/8/21 with Claim #3} In this recent Notice, US Bank alleges that the mortgage payment shall increase to \$2,844.86 commencing December 1, 2021. The sole reason provided for the change in payment was an increase in the escrow payment of \$189.29 per month or \$2,271.48 over the course of the year. This increase was attributed to an approximate \$2,100.00 annual increase in homeowners' insurance which apparently is now "Force Placed" by US Bank and an approximate \$150.00 annual increase in property taxes. The annual escrow account disclosure statement attached to

Court's claims register. The claim was subsequently transferred to US Bank as indicated in a Transfer of Claim filed on July 21, 2021 and docketed in this Court's claims register.

² Actually filed by US Bank's predecessor in interest Chalet Properties III, LLC

³ Actually filed by US Bank's predecessor in interest Chalet Properties III, LLC

this Pay Change Notice indicates that Ms. Widjaja's escrow account no longer has a surplus but now has a deficiency of \$4,106.60.

Ms. Widjaja has had Farmer's Insurance since the beginning of this loan, the policy is valid and in effect and there is no reason for US Bank to impose additional insurance. Ms. Widjaja has been patient over the years as the escrow account has changed and believed/hoped that the escrow surplus would work its way out in the end. However, it now appears that an accounting charge in excess of \$7,000 has been made by US Bank and the accounting is diverging even further. The Notice of Mortgage Pay Change is simply inaccurate and begs the question as to how US Bank has been accounting for payments made by Ms. Widjaja and the Trustee since this case commenced.

Notice re: Intent to Seek Attorney Fees

The obligation of Ms. Widjaja to make payments is memorialized in a Note dated November 18, 2008, as modified with a Loan Modification Agreement dated July 15, 2015, a copy of which is attached to the original Proof of Claim filed by US Bank in this case {Claims Register #3}. The Note contains an attorney fee provision at Paragraph 6(E) which also appears in the Loan Modification Agreement at Paragraph 6(d). The Note is secured by a Deed of Trust against Ms. Widjaja's residential real property. A copy of the Deed of Trust can be found attached to the original Proof of Claim. The Deed of Trust contains an attorney fee provision at Paragraph 9, 14 and 25.

Should this Court determine that the Notice of Mortgage Payment Change is in error, Ms. Widjaja will request an award of attorney fees incurred herein as authorized by the Note and Deed of Trust.

MICHAEL D. O'BRIEN & ASSOCIATES P.C.

/s/ Michael D. O'Brien
Michael D. O'Brien, OSB#951056
Of Attorneys for Debtor

CERTIFICATE OF SERVICE

In Re: Sutjiyati Widjaja

Case: 17-33838-pcm13

I hereby certify that on November 24, 2021, I served the “**Debtors’ Request for Hearing re: Notice of Mortgage Payment Change filed by US Bank Mortgage**” on the following parties by regular mail in a sealed envelope, with postage prepaid, and deposited in the United States Post Office:

Sutjiyati Widjaja – via electronic mail

US Bank, N.A. (Sent Certified Mail #7019-2970-0001-1804-4140)
c/o Andy Cecere, President
800 Nicollet Mall
Minneapolis, MN 554002

Michelle Ghidotti-Gonsalves, AAL
Ghidotti Berger LLP
1920 Old Tustin Ave.
Santa Ana, CA 92705

SN Servicing Corporation
c/o Corporation Service Company (RA)
1127 Broadway St. NE, Suite 310
Salem, OR 97301

SN Servicing Corporation
323 Fifth Street
Eureka, CA 95501

I further certify that the following person(s) will be served electronically via ECF when the foregoing document is filed with the court, in addition to any entity that has requested special notice from the Court:

Wayne Godare

US Trustee, Portland

/s/ Jackie Zielke
Jackie Zielke, Paralegal for
Michael D. O’Brien & Associates, P.C.